

**BEFORE THE
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION**

In the Matter of:

**RP TRAVEL,

Respondent.**

**Docket No. FMCSA-2009-0097¹
(Southern Service Center)**

ORDER

1. Background

On November 6, 2008, the Arkansas Division Administrator, Federal Motor Carrier Safety Administration (FMCSA), issued a Notice of Claim to Respondent, RP Travel, proposing a civil penalty of \$2,000 for conducting operations in interstate commerce during a period when its registration as a for-hire carrier had been suspended for failure to pay a civil penalty, in violation of 49 CFR 386.84(a)(1). The Statement of Charges section of the Notice of Claim indicated that Respondent operated a commercial motor vehicle in interstate commerce on July 1, 2008, after it had failed to pay a civil penalty in full, resulting in the issuance of an Out-Of-Service Order (OOSO), which was served on Respondent on August 29, 2007.²

By Order issued April 15, 2009, I asked that Respondent place in the record all documents pertaining to this matter and identify each document. I further asked

¹ The prior case number of this matter was AR-2009-0005-US0698.

² This date is inaccurate. According to Claimant's exhibits in his Response to my April 15, 2009 Order, an Order to Show Cause why Respondent should not be prohibited from operating was served on Delta Youth Music Association (Delta) on August 27, 2007 (Government Exhibit J), and the Order to Cease All Interstate Operations, which presumably is the OOSO referred to in the Statement of Charges, was served on Delta on October 1, 2007, with an effective date of October 8, 2007 (Government Exhibit K). The Statement of Charges is contained in Government Exhibit T.

Claimant, the Field Administrator for FMCSA's Southern Service Center, to reply to whatever evidence and argument Respondent submitted.

By letter dated May 4, 2009, Respondent submitted argument, and by letter dated May 15, 2009, Respondent submitted documents and argument in response to the Order. Respondent stated its belief that the current matter was based upon a 2007 case against Delta Brigade Youth Music Association³ (Delta), and that Claimant had mistakenly concluded that Respondent is a continuance of Delta. Respondent contended that in either December of 2008 or January of 2009, it received a letter from the United States Department of the Treasury (Treasury) stating that it was attempting to collect the civil penalty on the 2007 case.⁴ Respondent averred that after about a month of researching all the documents, Treasury dismissed the case. Respondent submitted a document from Treasury showing the date of dissolution to be January 30, 2009. Someone, most likely Respondent, circled the date and wrote next to it "Date closed."⁵ Although it did not so state, Respondent implied that because Treasury closed the 2007 case, Respondent did not have to pay that civil penalty and, as a result, it could not have violated 49 CFR 386.84(a)(1), as charged in the November 6, 2008 Notice of Claim, for operating after its registration had been suspended for failing to pay the civil penalty.

Respondent also submitted a Certificate of Dissolution for Delta from the Arkansas Secretary of State, dated January 21, 2008. Respondent concluded that the 2009 case against it should be dismissed because: (a) Respondent is not a continuance of

³ Claimant refers to the carrier as Delta Youth Music Association.

⁴ By letter dated March 1, 2009, Respondent stated that it received the letter from Treasury on January 1, 2009; by letter dated May 4, 2009, Respondent stated that it received the letter in December of 2008.

⁵ In a letter dated March 1, 2009, Respondent stated that Treasury investigated the 2007 case and ruled it to be closed.

Delta; (b) Delta was disbanded before Respondent was formed; (c) none of the board members of Delta, a non-profit organization, can be held responsible for its debts; and (d) Delta was a non-profit organization, while Respondent is a for-profit privately owned company.

On June 26, 2009, Claimant responded to the Order of April 15, 2009, arguing that Respondent is a continuation of Delta under either federal common law or the state law of Arkansas. Claimant, however, did not address Respondent's contention that the Department of the Treasury closed the 2007 case.

2. Discussion

Before I rule on the issue of continuance, the parties need to clarify what the Treasury document is and how it relates to the issue in this case. Although Respondent stated that Treasury closed the 2007 case on January 30, 2009 via this document, the document itself does not state that. The form shows only that the date of dissolution was January 30, 2009.⁶ Although another portion of the form provides the notation: "Case state: At CA CLOSED[.]" there is no explanation as to what this means even though Respondent circled "At CA CLOSED[.]" Therefore, within 30 days of the date of service of this Order, Respondent should submit the letter it received from Treasury on January 1, 2009 concerning collection, and any other correspondence it had with the United States Department of the Treasury. Claimant may respond within 15 days of the service date of Respondent's submission. If Respondent does not provide the requested information, Claimant should submit argument concerning the relevance of the Treasury document

⁶ The Secretary of State Certificate of Dissolution, however, is dated January 21, 2008.

and an explanation of both the “Date of dissolution” and “At CA CLOSED[.]”

It Is So Ordered.

A handwritten signature in cursive script, appearing to read "Rose A. McMurray".

Rose A. McMurray
Assistant Administrator
Federal Motor Carrier Safety Administration

2.24.10
Date

CERTIFICATE OF SERVICE

This is to certify that on this 25 day of February, 2010, the undersigned mailed or delivered, as specified, the designated number of copies of the foregoing document to the persons listed below.

Mr. Ronnie Patterson, President
RP Travel
14101 Pleasant Hill Road
Alexander, AR 72002

One Copy
U.S. Mail

Deborah Stanziano, Esq.
Trial Attorney
Office of Chief Counsel (MC-CCE)
Federal Motor Carrier Safety Administration
1800 Century Boulevard, Suite 1700
Atlanta, GA 30345

One Copy
U.S. Mail

Darrell Ruban, Field Administrator
Southern Service Center
Federal Motor Carrier Safety Administration
1800 Century Boulevard, Suite 1700
Atlanta, GA 30345

One Copy
U.S. Mail

Cynthia Williams Campbell
Acting Arkansas Division Administrator
Federal Motor Carrier Safety Administration
700 West Capitol Avenue
Room 2527 Federal Building
Little Rock, AR 72201

One Copy
U.S. Mail

U.S. Department of Transportation
Docket Operations, M-30
West Building Ground Floor, Room W12-140
1200 New Jersey Avenue, S.E.
Washington, D.C. 20590

Original
Personal Delivery

